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10 Attorneys for Defendant

11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF ARIZONA

13 Manuel Bandres Oto and Elisa Lopez-
Belio, individually, and on behalf of all
14 eligible beneficiaries of claims arising
from the wrongful death of Marina
15 Bandres Lopez-Belio, et al.

Case No. CV-01027-PHX-DJH

16 Plaintiffs,

17 v.

18 Airline Training Center Arizona, Inc.,

19 Defendant.
20

21
22 **DECLARATION OF PROF. DR. ANSGAR**
STAUDINGER IN SUPPORT OF DEFENDANT
23 **AIRLINE TRAINING CENTER ARIZONA, INC.'S**
MOTION TO DISMISS COMPLAINT

24 I, Professor Dr. Ansgar Staudinger hereby declare as follows:

25 1. I am employed as a Professor of Civil Law, International, Private, Procedural
26 and Commercial Law at Bielefeld University in Germany. I have held this position since
27 2003. I completed my first state law examination at the Albert-Ludwig University of
28 Freiburg located in Germany in 1993. I completed the law assessor exam in Düsseldorf in

1 1995 therewith being licensed to practice law in Germany. Following this, I received a
2 doctorate from Heinrich Heine University in Düsseldorf, Germany in 1998. I completed my
3 postdoctoral lecturing qualification at Münster University in Germany in 2003. My
4 background, including my professional memberships and publications, is set forth in
5 Exhibit "A" hereto. I submit this Declaration in support of the motion of Airline Training
6 Center Arizona, Inc. ("ATCA") for dismissal on the grounds of *forum non conveniens*.

7 2. I have reviewed the Complaint filed by Manual Bandres Oto, *et al.*
8 ("plaintiffs") in this litigation seeking damages arising out of the deaths of their decedents in
9 the crash of Germanwings Flight No. 4U9525 on March 24, 2015.

10 **Summary of My Opinions**

11 3. Based upon the allegations contained in the Complaint and other information
12 provided to me, and my experience and evaluation of the law and practice in Germany, I am
13 of the firm opinion that plaintiffs would be able to bring an action on their claims against
14 ATCA in the courts of Germany, and that German law provides adequate remedies for their
15 claims. Accordingly, in my opinion, Germany provides an adequate forum for plaintiffs to
16 pursue their claims against ATCA.

17 4. I have been advised that Germanwings, the operator of Flight No. 4U9525, has
18 agreed not to contest liability for full compensatory damages available under the applicable
19 law in connection with the deaths of plaintiffs' decedents in the crash. I am of the opinion
20 that plaintiffs would be able to bring an action against Germanwings in the courts of
21 Germany for their claims arising out of the deaths of their decedents, that the German courts
22 would accept and enforce Germanwing's agreement not to contest liability for compensatory
23 damages arising out of the deaths of plaintiffs' decedents, and that German law provides
24 adequate remedies for plaintiffs' claims against Germanwings. I note that Germanwing's
25 agreement not to contest liability for compensatory damages would eliminate plaintiffs'
26 burden of proving liability before being able to recover full compensatory damages for their
27 claims arising out of the deaths of their decedents.

1 **The Exercise of Jurisdiction Over ATCA by the German Courts**

2 5. In order for plaintiffs' claims against ATCA to be adjudicated in Germany, the
3 German courts must be able to exercise personal jurisdiction over ATCA. I have been
4 advised that ATCA is a corporate entity organized and existing under the laws of Arizona,
5 with its principal and only place of business located in Arizona. I also am aware that
6 plaintiffs allege in paragraph 2 of the Complaint that ATCA's wrongful and negligent acts
7 that give rise to their claims took place in Arizona.

8 6. The exercise of jurisdiction by a German court over a non-resident defendant
9 such as ATCA is governed by Article 6 (1), 26 (1) Brussels Ia Regulation. In the
10 circumstances involved in plaintiffs' claims against ATCA, where ATCA has no presence in
11 Germany and its allegedly wrongful conduct took place outside of Germany, ATCA
12 normally would not be subject to the jurisdiction of the German courts (Article 6 (1) Brussels
13 Ia Regulation)

14 7. However, the Brussels Ia Regulation provides that the German courts may
15 exercise jurisdiction over a party such as ATCA if that party voluntarily appears before the
16 German court without disputing the court's exercise of jurisdiction (Article 6 [1], 26 [1]
17 Brussels Ia Regulation). I have been advised that ATCA is willing to submit voluntarily to
18 the jurisdiction of the courts of Germany as a condition of the dismissal of this litigation on
19 the grounds of *forum non conveniens*. Accordingly, pursuant to Article 6 (1), 26 (1) Brussels
20 Ia Regulation, I am of the opinion that the German courts would be able to fully exercise
21 jurisdiction over ATCA pursuant to ATCA's agreement to voluntarily submit to the
22 jurisdiction of German courts.

23 **The Exercise of Jurisdiction Over Germanwings by the German Courts**

24 8. I have been advised that Germanwings, the operator of Flight No. 4U9525, is a
25 corporate entity organized and existing under the laws of Germany with its headquarters and
26 principal place of business located in Cologne, Germany.

27 9. Under Article 4 (1) Brussels Ia Regulation, general jurisdiction exists over a
28 defendant at its domicile which, in the case of a corporate entity such as Germanwings,

1 exists at the entity's (1) statutory seat, (2) place of central administration, or (3) principal
2 place of business. I am of the opinion that under Article 63 (1) Brussels Ia Regulation,
3 Germanwings would be considered to be domiciled in Germany, and that the German courts
4 would have jurisdiction to adjudicate plaintiffs' claims against Germanwings arising out of
5 the deaths of plaintiffs' decedents.

6 **Availability of Remedies for Plaintiff's Claims**

7 10. Section 823 (1) of the German Civil Code (GCC) provides a cause of action for
8 damages against a person or entity who intentionally or negligently causes harm to the life,
9 the body, the property, or other rights of another person. Based upon the allegations in the
10 Complaint, I am of the opinion that German law would provide plaintiffs a cause of action
11 for damages, subject to proof, against ATCA in connection with the deaths of their
12 decedents.

13 11. In a case involving claims such as plaintiffs' claims against ATCA where the
14 allegedly wrongful and negligent conduct occurred wholly outside of Germany, German law
15 provides that the German courts may, in appropriate circumstances and based upon sufficient
16 proof provided by the parties, determine the issue of liability in accordance with the law of
17 the place where the allegedly wrongful and negligent conduct took place (Article 4 (1) Rome
18 I Regulation). German courts routinely engage in this type of application of non-German
19 law. In the event the German court in this case determined that the issue of ATCA's liability
20 should be determined in accordance with the law of Arizona, the Court would determine the
21 content of that law, with the assistance of the parties, through the use of expert testimony,
22 statutes, and other learned treatises, as necessary and appropriate (Section 293 of the German
23 Code of Civil Procedure [CCP]). The German Federal Supreme Court has emphasized that
24 where foreign law is applied, the German court is required to interpret and apply that law just
25 as a judge of the respective foreign court would interpret and apply that law (BGH,
26 judgement of 30 January 2001 - XI ZR 357/99).

27 12. The issue of liability is decided by the Court, acting impartially, based upon the
28 evidence provided by the parties during the proceedings (Section 128 [1] CCP).

1 13. Based upon the fact that Germanwings operated Flight No. 4U9525, I also am
2 of the opinion that German law would provide plaintiffs a cause of action for damages,
3 subject to proof, against Germanwings in connection with the deaths of their decedents.
4 Plaintiffs' claims against Germanwings arising out of the deaths of their decedents normally
5 would be governed by the terms and provisions of the Montreal Convention of 1999 (Article
6 17 [1] Montreal Convention). However, in view of Germanwings' agreement not to contest
7 liability for full compensatory damages available under the applicable law, a discussion of
8 the basis for that cause of action against Germanwings under German law is not required.
9 Pursuant to German law (Section 138 [3] CCP), the German courts would accept and enforce
10 Germanwings' agreement not to contest liability, and so the only issue plaintiffs would be
11 required to prove with respect to their claims against Germanwings would be their standing
12 to assert claims arising out of the deaths of their decedents, and the nature and extent of their
13 alleged damages suffered as a result of their deaths (BGH, judgement of 18 May 2005 - VIII
14 ZR 368/03).

15 14. In a case involving claims for wrongful death, the persons entitled to assert
16 claims for damages are the heirs - for instance the surviving spouse, surviving children or
17 surviving parents. The heirs of the decedent's estate also are entitled to assert claims on
18 behalf of the estate, where appropriate and subject to proof, for injuries suffered by the
19 decedent prior to death (Section 1922 [1] GCC).

20 15. In a case involving wrongful death, the potentially recoverable damages under
21 German law are as follows: (1) compensation for the indirect losses suffered by a person
22 who is deprived of his right to maintenance from the decedent (Section 844 [2] GCC),
23 including for instance the loss of income or financial support, funeral expenses (Section 844
24 [1] GCC) or the loss of services in the home (housekeeping services), (2) "shock" or grief
25 type damages suffered by the survivors as a result of the decedent's death (Section 823 [1] in
26 conjunction with Section 253 [2] GCC), (3) pecuniary losses incurred by the survivors as the
27 result of medical treatments as a result of the decedent's death (Section 823 [1] in
28 conjunction with Section 249 [2] GCC), and (4) damages for personal injury and mental

1 fright and shock suffered by the decedent prior to death (Sections 823 [1], 253 [2], 1922 [1]
2 GCC).

3 16. In cases where the survivor and/or the decedent is and was a resident of a
4 country other than Germany, German law provides that the German court may, in
5 appropriate circumstances and based upon sufficient proof provided by the parties, determine
6 the issue of damages in accordance with the law of the domicile of the decedent or survivor
7 (see among others Article 4 Rome I Regulation). German courts routinely engage in this
8 type of application of non-German damage law. In the event the German court in this case
9 determined that the issue of damages should be determined in accordance the law of a
10 country other than Germany, the Court would determine the content of that law, with the
11 assistance of the parties, through the use of expert testimony, statutes, and other learned
12 treatises, as necessary and appropriate (Section 293 CCP).

13 17. The amount of damages to be awarded is decided by the Court, acting
14 impartially, based upon the evidence provided by the parties during the proceedings (Section
15 287 CCP).

16 **The General Principles of Procedural Law in the German Courts**

17 18. Germany enjoys a well-developed legal system, and German procedural law is
18 characterized by a number of general principles, of which the independence of the judiciary
19 and the principle of a fair trial are the most dominant.

20 19. The operation of the German Government is based upon the principle of the
21 separation of powers among three branches: the legislature, the executive, and the judiciary.
22 The judiciary is not subordinate to the legislature or the executive (Article 97 of the German
23 Constitution and Sections 25 sq. of the German Judiciary Act [GJA]).

24 20. The German Constitution guarantees judicial independence in Article 97. The
25 independence of the judiciary is further established by Section 25 of the German Judiciary
26 Act, which provides that the decision making function of judges is not subject to control by,
27 or influence of, other branches of the government. The independence of the judiciary is
28

1 further ensured by the fact that a professional judge cannot be dismissed or transferred
2 (Section 30 GJA).

3 21. Except in limited circumstances that would not be involved in plaintiff's claims
4 against ATCA or Germanwings, only professional judges subject to strict regulation and
5 training are permitted to adjudicate cases in the German court system (compare Section 59
6 [1] of the Court Constitution Act and Sections 5 sq. GJA).

7 22. A central element of the German Code of Civil Procedure is the right to have a
8 fair hearing (Article 103 of the German Constitution). This is a procedural right guaranteed
9 by Article 103 of the German Constitution. Moreover, Germany is a member of the
10 European Convention on Human Rights, which guarantees the right to be heard before an
11 impartial court. In addition, Article 47 of the European Charter of Fundamental Rights,
12 which is binding on Germany, guarantees a fair and public hearing within a reasonable time
13 by an independent and impartial judiciary.

14 23. The German court system is a public, adversarial-type system similar to that
15 employed in the United States. The parties, with the assistance of counsel, are permitted and
16 required to submit to the Court evidence through documents, testimony and experts in
17 support of their respective positions, and are subject to cross-examination by their opponents
18 and the Court, as appropriate (Sections 445 sq. CCP). Since it is up to the parties to present
19 information that builds the foundation for the judges' decision, there are limited means to
20 compel the production of testimony and documentary evidence by the parties (compare
21 Sections 141 sq. CCP). However, the court has various coercive means at its disposal in
22 order to compel witnesses to testify (compare Section 390 CCP).

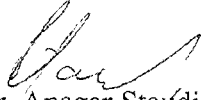
23 24. The German court system also provides the parties the option, at their request,
24 to stay their proceedings for an appropriate period of time in order to pursue mediation or
25 other types of alternative dispute resolution in an effort to resolve the claims voluntarily
26 (Section 278 CCP).

27 25. As with the system in the United States, the plaintiff bears the burden of proof
28 on the issues of liability (except in cases where, as with Germanwings, a party has agreed not

1 to contest liability) and damages, and the defendant bears the burden of proof to establish its
2 defenses (BGH, judgement of 18 May 2005 - VIII ZR 368/03).

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4 I hereby declare under the penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on June 15th, 2016

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9 Professor Dr. Ansgar Staudinger
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